

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 19, 2005

Department: Airports

Bulk Item: Yes X No

Airport: Florida Keys Marathon Airport

AGENDA ITEM WORDING:

Approval of Lease Agreement with City of Marathon concerning lease of 55,363 square feet of land at the Florida Keys Marathon Airport in order for the City to build a new fire facility at the Airport to provide emergency fire and rescue services to the Airport and surrounding community

ITEM BACKGROUND: The attached Agreement provides for the City of Marathon to lease land at the Marathon Airport in order to build a new fire facility. The initial term of the lease is for thirty (30) years with an extension option. The City agrees to house the Airport's fire and response apparatus, to provide customary fire protection and rescue services, and respond to any and all emergency situations on the Airport.

PREVIOUS RELEVANT BOCC ACTION: On March 17, 2004, Board gave conceptual approval to enlarge the parcel provided for the Marathon Fire Station at the Marathon Airport to accommodate the proposed new fire facility.

CONTRACT/AGREEMENT CHANGES: This is a new agreement.

STAFF RECOMMENDATIONS: Approval

TOTAL COST: \$0.00

BUDGETED: Yes No N/A

COST TO COUNTY: \$0.00

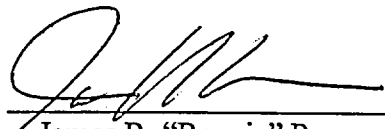
SOURCE OF FUNDS:

REVENUE PRODUCING: Yes X No

AMOUNT PER MONTH **Year** \$10.00

APPROVED BY: County Atty YES OMB/Purchasing YES Risk Management YES

MARATHON AIRPORT MANAGER APPROVAL:


James R. "Reggie" Paros

DIRECTOR OF AIRPORTS APPROVAL:


Peter J. Horton

DOCUMENTATION:

Included X

To Follow

Not Required

DISPOSITION:

AGENDA ITEM # 016

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract #

Contract with: City of Marathon

Effective Date: 1/19/05

Expiration Date: 30 years from
commencement date

Contract Purpose/Description: Lease Agreement, property for Fire Station

Contract Manager: Bevette Moore
(name)

5195
(Ext.)

Airports - Stop # 5
(Department/Courier Stop)

for BOCC meeting on: 1/19/05

Agenda Deadline: 1/4/05

CONTRACT COSTS

Total Dollar Value of Contract: None

Budgeted? N/A

Grant: N/A

County Match: N/A

Current Year Portion: N/A

Account Codes: N/A

ADDITIONAL COSTS

Estimated Ongoing Costs: N/A
(not included in dollar value above)

For:
(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed Yes No	Reviewer	Date Out
Airports Director	<u>1/1/</u>	() ()	<u>Peter Horton</u>	<u>1/5/05</u>
Risk Management	<u>12/30/04</u>	() (✓)	<u>M. Stewart</u> for Risk Management	<u>12/30/04</u>
O.M.B./Purchasing	<u>1/1/</u>	() ()	<u>Shirley Spindle</u> for OMB	<u>1/4/05</u>
County Attorney	<u>1/1/</u>	() ()	<u>Pedro Melendo</u> County Attorney	<u>1/3/05</u>

Comments: _____

**LEASE AGREEMENT BETWEEN
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS
AND THE CITY OF MARATHON**

THIS LEASE ("Lease") made this ___ day of _____, 200___, by and between the Monroe County Board of County Commissioners (the "County"), having an address at 1100 Simonton Street, Key West, Florida 33040 and the City of Marathon (the "City"), having an address at 11045-55 Overseas Highway, Marathon, Florida 33050.

WITNESSETH:

WHEREAS, the County is the owner of a certain parcel of land (the "Land") with improvements thereon, known as the Florida Keys Marathon Airport (the "Airport") as more fully described on the survey attached hereto as Schedule A-1; and

WHEREAS, the City operates the Marathon Fire Station that is currently located on the Land; and

WHEREAS, the City desires to lease approximately 55,363 square feet of the Land in order to build a new fire facility (the "Premises") as more fully described on the legal description attached hereto as Schedule A-2; and

WHEREAS, the County and the City have conceptually agreed to the construction of a new fire facility ("Fire Facility") at the Airport to provide emergency fire and rescue services to the Airport and surrounding community.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the County does hereby demise and lease to the City and the City does hereby lease from the County the Premises under the following terms and conditions:

1. **TERM.**

(a) **Initial Term.** The term of this Lease shall commence on _____, 200___ (the "Commencement Date") and shall expire on the thirtieth anniversary of the Commencement Date, unless sooner terminated in accordance with the provisions hereof (the "Initial Lease Term").

(b) **Extension.** The City or the County, at its election, shall have the option to extend the Initial Lease Term (the "Extension Option") for ten (10) successive periods (the "Extension Period") of five (5) years each. Either Party shall give the other written notice of its election to extend the Lease Term not less than two (2) months prior to the expiration of the Initial Lease Term or the expiration of any applicable Extension Period. The Initial Lease Term, together with any Extension Period(s) by which the Initial Lease Term is extended, are hereinafter collectively referred to as the "Lease Term".

(c) **Holdover.** Should the City hold over in possession after the expiration of the Lease Term or any applicable Extension Period, such holding over shall not be deemed to extend the

Lease Term or renew this Lease, but the tenancy thereafter shall continue as a month-to-month tenancy upon the terms, conditions and covenants set forth herein.

(d) Lease Year. As used in this Lease, the term "Lease Year" shall mean each period of twelve (12) consecutive calendar months during the Lease Term commencing on the Commencement Date.

2. USE OF PREMISES. The Premises are leased to the City for the purpose of housing a fire facility, the provision of fire services, and related governmental operations and shall be used for such purposes only. The City, at the City's expense, is authorized to construct a new fire facility on the Premises, (the "Fire Facility"). The Fire Facility must be built in conformity with the applicable building codes. Before commencing construction, the City must obtain development approvals, building permits and any other approvals that are required by the governmental entities having jurisdiction over the Fire Facility. When the Fire Facility is complete, the City must furnish the Marathon Airport Director a copy of the City issued Occupancy Certificate. The City will have all building and planning permitting responsibility over the Fire Facility.

The City agrees to house the Airport's fire and rescue apparatus, to provide customary fire protection and rescue services, and respond to any and all emergency situations on the Land, all in accordance with the rules and regulations of the Federal Aviation Authority (the "FAA"), and will provide the level of service required for air operations to meet FAA Part 139 (the "Fire Services"). On a quarterly basis, the City shall provide to the County all Fire Services reports as required by FAA rules and regulations.

3. RENT. The City shall pay the County as rent for the Premises, during the Term of this Lease, a yearly amount of Ten and No/00 Dollars (\$10.00), which shall be payable on the 1st day of each calendar year and every year thereafter without any prior demand therefore and without any deduction or setoff whatsoever. If the yearly payment of rent is not received by the County within seven (7) days from the date it is due, a late fee of ten percent (10%) of such payment shall be payable to the County as additional rent. All rent due the County under this Lease shall be payable at the address of the County as provided to the City unless the County shall notify the City in writing of any change.

Should the City cease to provide the Fire Services, the City may vacate the Premises and terminate this Lease in accordance with Section 13 below.

4. CITY CREDIT.

(a) At such time as the County starts collecting landing fees from FAA Part 121 Air Carriers, the City may provide notice to the County that the City requires a re-evaluation of compensation due the City for the Fire Services rendered under this Lease (the "Credit Trigger Notice"). Within forty-five (45) days of the County's receipt of the Credit Trigger Notice, the City and the County shall mutually agree upon a fair market valuation, on a yearly basis, of the Fire Services provided by the City, over and above the Premises Value (the "City Credit"). The City Credit will then be paid by the County to the City in equal monthly installments commencing on the

next full month after the City Credit is established and as otherwise provided for in Subsection (c) below.

(b) Payment. The City Credit shall be payable in monthly installments, each equal to 1/12th of such annual City Credit. All monthly installments of City Credit shall be payable in advance, on the first day of each calendar month, to the City at the address given by the City to the County. The County shall also pay the sales tax, if any, on the City Credit, to the City, who shall be responsible for remitting same to the Florida Department of Revenue. The City Credit shall be paid without notice or demand and without set-off or deduction of any kind or nature and without abatement except as otherwise specifically provided herein.

(c) Real Estate Taxes. The Premises is exempt from real property taxes, however, should the Premises for some reason be deemed non-exempt from real property taxes at any time during the Lease Term, the parties shall negotiate the manner of payment for the sum attributable to the Premises.

5. REPAIRS AND MAINTENANCE OF THE FIRE FACILITY. The County shall deliver the Land to the City in "As-Is, Where-Is" condition. It shall be the City's responsibility to construct the Fire Facility specified in Section 2 above. During the Lease Term, the City, at its expense, shall maintain in a first-class condition, the Fire Facility, including, without limitation, the elevators, plumbing, air conditioning, mechanical, life safety, heating and electrical systems and Roof and shall keep the Fire Facility and all landscaping, parking areas, sidewalks, curbs and passageways within the Fire Facility in good and clean order and condition, subject to reasonable wear and tear, and shall make all repairs thereto, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen.

6. INSURANCE.

(a) The City and the County agree to insure or self insure their respective interests in connection with personal injury, death and personal property damage to the extent each deems necessary or appropriate.

(b) The City shall require any subcontractor performing the Fire Services contemplated in this Agreement to maintain throughout the duration of this Lease the following insurance:

(i) Commercial general liability in the amount of \$1,000,000 per occurrence for bodily injury and property damage. This policy must include coverage for contractual liability and specifically cover the indemnity set forth in this Lease. The County shall be named as an additional insured on this policy.

7. REPAIRS AND MAINTENANCE OF EQUIPMENT. The City shall be responsible for the daily maintenance and care of the equipment and other personal protection equipment used in performing the Fire Services. Any repairs or replacements of equipment or other

personal protection equipment used by the City in performing the Fire Services, shall be at the County's expense.

8. UTILITIES. The County shall not be required to contract for or furnish to the Premises, for the benefit of the City, any utility services of any kind, such as, but not limited to water, steam, gas, electricity, light or power. The City shall contract for and pay all amounts and charges for such services directly to the supplier of such service.

9. CONSTRUCTION; OWNERSHIP OF IMPROVEMENTS. The City shall construct the Fire Facility that will be adequate, in the City's sole discretion, to enable the City to perform the Fire Services as required in Section 2 above. All improvements made by the City at any time to the Premises during the Lease Term shall be and remain the property of the City. The City may, upon the expiration or earlier termination of this Lease, remove any of the City's furniture, business machines, kitchen equipment and appliances, equipment, trade fixtures, and vaults purchased or installed in the Fire Facility, at the City's expense, so long as such removal does not cause structural damage to the Fire Facility.

10. DAMAGE OR DESTRUCTION.

(a) Repair or Termination. Subject to the City's options to terminate hereinafter provided, if during the Lease Term, the Premises or any portion thereof is damaged by fire, earthquake, hurricane or other casualty or peril, the City shall have the option to repair or rebuild the Premises to the condition at least equal to that existing immediately prior to said damage. If the City does not elect to repair or rebuild the Premises the City may elect, upon ten (10) calendar days notice to the County, to terminate this Lease pursuant to the conditions contained in Section 13 below. The City shall be responsible for the demolition and removal of debris in connection with such termination due to casualty or peril as described in this section.

(b) Abatement of Rent. The County's obligation to pay the City Credit shall be abated during the period commencing with the date of the casualty and continuing until all repairs are completed.

11. CONDEMNATION. In the event of any taking of or damage to all or any part of the Premises by reason of any exercise of the power of eminent domain, whether by a condemnation proceeding, inverse condemnation or otherwise, or in the event of any transfer, conveyance, or sale of all or any part of the Premises made in lieu of an exercise of the power of eminent domain (all of the foregoing being hereinafter referred to as "Appropriation") prior to or during the Lease Term, the rights and obligations of the County and the City with respect to such Appropriation, each time there is an instance of such Appropriation, shall be governed by the following provisions:

(a) Appropriation of All of the Premises. In the event of Appropriation of all of the Premises, this Lease shall terminate as of the date of such Appropriation. The date of Appropriation shall be the date upon which the condemning authority takes possession of the Premises or the date upon which the City is required by the condemning authority to commence

vacating the Premises or any portion thereof as a result of such Appropriation, whichever date shall first occur.

(b) Appropriation of Less Than All of the Premises. In the event of Appropriation of less than all of the Premises, subject to the City's right to terminate as set forth in Subsection (b)(i) below, this Lease shall continue in full force and effect, except that as to the portion of the Premises so appropriated this Lease shall terminate as of the date of Appropriation.

(i) City's Right to Terminate. If the Appropriation shall render all or a substantial portion of the Premises unavailable or unsuitable in the City's sole opinion to continue the City's normal use of the Premises, the City shall have the right to terminate this Lease. Exercise of such right by the City shall be made by written notice to the County on or before thirty (30) calendar days after the date of the City's receipt of written notice of Appropriation. Any such termination shall be effective as of the date of the Appropriation.

(ii) Restoration of Premises. If this Lease is not terminated by the City as a result of any Appropriation, the County will restore the remainder of the Premises as promptly as reasonably practicable to as close to the same condition (as circumstances permit) as existed immediately prior to the Appropriation.

(c) Damages. Notwithstanding the foregoing, the City shall have the right, in its sole discretion, to bring and maintain a separate action for damages against the condemning authority. In the event the county is advised by a condemning authority of the authority's intent to institute proceedings and the county enters into any type of pre condemnation settlement negotiations which purpose is to determine the appropriate level of damages to be awarded, the county agrees that the city is an indispensable party to the negotiations. The city and the county agree that each party shall bear any costs associated with any negotiations pursuant to this subsection and may seek reimbursement from the condemning authority. The city and county agree that each shall be solely responsible for the conduct of its negotiations and each shall have sole authority to enter into an agreement with respect to its damages. The city and the county agree that in any proposed settlement, the amount of the settlement to be awarded shall be specific as to the city and as to the county and the payment shall be made directly to the city and the county.

(d) Temporary Taking. If all or any portion of the Premises shall be condemned or taken for governmental occupancy for a limited period, the City shall have the right, in its sole discretion, to terminate this Lease. If the Lease is not terminated by the City, the City shall be entitled to receive the entire award therefor (whether paid as damages, City Credit or otherwise) unless the period of governmental occupancy extends beyond the expiration of the Lease Term (including all Extension Periods) in which case the County shall be entitled to such part of such award as shall be properly allocable to the cost of restoration of the Premises to the extent any such award is specifically made for such purpose, and the balance of such award, if any, shall be apportioned between the County and the City as of the date of expiration of the Lease Term. If the termination of such governmental occupancy is prior to the expiration of the Lease Term, the City covenants, to the extent an award has been made to the City for the purpose of restoring the Premises, to restore the Premises as nearly as possible to the condition in which they were prior to

the condemnation or taking and the City shall use such award for such purpose, provided that the County will make available to the City any award made to the County for restoration.

(e) Notice of Appropriation. Promptly after obtaining knowledge thereof, the County or the City, as the case may be, shall notify the other of any pending or threatened Appropriation affecting the Premises. Neither the County nor the City shall make any voluntary agreement with the appropriating authority which would affect any award to which the other party might be entitled as a result of such Appropriation without the prior written consent of the other party.

12. QUIET ENJOYMENT. The City, upon the performance by it of all of the material obligations imposed upon it pursuant to the terms of this Lease, shall at all times during the Lease Term peaceably and quietly enjoy the Premises and all appurtenances without any unreasonable disturbance from the County or from any other person claiming through the County, and the County shall defend same.

13. SURRENDER UPON TERMINATION; CONDITION UPON TERMINATION. On the last day of the Lease Term, or upon the sooner termination hereof, the City shall surrender the Fire Facility to the County. All personal property of the City, including the furniture or movable trade fixtures which remain the property of the City pursuant to Section 3 above (to the extent the removal of such personal property does not effect the structural integrity of the Fire Facility), shall be removed by the City on or before the last day of the Lease Term or, if the Lease is terminated sooner, within three (3) months after such termination.

14. ASSIGNMENT AND SUBLEASE. The City may not assign its interest under this Lease or sublet all or any portion of the Premises upon the County's prior consent, which shall not be unreasonably withheld or delayed.

15. CITY'S DEFAULT. Each of the following events shall be considered an event of default by the City under this Lease (an "Event of Default"):

(a) Monetary. Failure by the City to make a payment of any Rent payable under this Lease, or any part thereof, as and when due and payable; provided, however, that the City shall have ten (10) days after written notice from the County of such default to cure such default; or

(b) Non-Monetary. Failure by the City to perform or comply with any of the obligations, covenants, agreements, terms or provisions contained in this Lease (other than those specified in Subsection (a) above); provided, however, that the City shall have fifteen (15) days after written notice of such default from the County to cure such default; provided further that if such default cannot be cured with reasonable diligence within such thirty-day period, the time within which to cure such default shall be extended for such time as may be necessary to cure such default with all reasonable diligence.

16. COUNTY'S REMEDIES. Upon the occurrence of an Event of Default, and at any time thereafter during the continuance of such Event of Default without cure, the County shall give

written notice to the City specifying such Event(s) of Default and stating that this Lease and the Lease Term shall terminate on the date specified in such notice, and except as otherwise herein provided, this Lease and the Lease Term and all rights of the City under this Lease shall terminate on said date. Upon any such termination of this Lease, the City shall quit and peacefully surrender the Premises to the County.

17. COUNTY'S DEFAULT.

(a) Monetary. Failure by the County to make a payment of any City Credit payable under this Lease, or any part thereof, as and when due and payable; provided, however, that the County shall have ten (10) days after written notice from the City of such default to cure such default; or

(b) Non-Monetary Default. If the County shall be in default under this Lease for a period of more than ten (10) calendar days, the City may cure the County's default at the expense of the County if such default continues for a period of ten (10) calendar days after the date of the giving by the City to the County of notice of the City's intention to cure the County's default; provided, however, that in the case of a default which for causes beyond the County's reasonable control (financial inability excepted) cannot with due diligence be cured within the 10-day period, such 10-day period shall be deemed extended if the County: (a) shall immediately upon the receipt of the City's notice, advise the City of the County's intention to institute all steps necessary to cure the County's default, and (b) shall institute and thereafter with reasonable dispatch prosecute to completion all steps necessary to cure the default.

(c) Right to Terminate. Notwithstanding the foregoing, if any default of the County shall continue for more than a period of thirty (30) calendar days and shall substantially interfere with the City's use or occupancy of the Premises, the City shall (without limiting any other remedies of the City hereunder, including, any right of offset or damages) have the right to terminate this Lease.

(d) Sums Payable on Demand. Any sums payable by either party to the other as a result of a default shall be paid on demand, and with respect to any sums payable by the County to the City, if not paid within ten (10) calendar days after receipt of written demand shall be credited to or deducted from, as applicable, the next monthly installments of City Credit and Additional Rent payable hereunder.

18. CITY'S/COUNTY'S REMEDIES NON-WAIVER. No failure by the County or the City to insist upon the strict performance of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance or payment of full or partial City Credit during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19. CUMULATIVE REMEDIES. Each right and remedy of the County and the City provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the County or the City of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or the City of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

20. LAWFUL PURPOSE; ENVIRONMENTAL LAWS AND CONDITIONS. The City hereby covenants and agrees that during the Lease Term the Premises shall be used exclusively for lawful purposes, in accordance with the laws, rules, regulations and ordinances (collectively, "Laws") of the United States, the State of Florida and the City of Marathon, and all agencies of the foregoing, relating to the use and occupancy of the Premises and the conduct of the City's business thereon, including without limitation all Laws relating to health, nuisance, fire, highway, sidewalks and the environment, inclusive of Environmental Laws as defined below. The City shall not use, suffer or permit any person to use the Premises for any purpose or use in violation of any applicable law, ordinance or other governmental regulations, including but not limited to Environmental Laws, or for any immoral or unlawful purposes whatsoever. The City shall not suffer or permit an Environmental Condition caused by the City subsequent to the date hereof to persist, once discovered, and same shall be cured within a reasonable time.

To the extent authorized by Section 768.28 *Florida Statutes*, the City hereby agrees to defend, indemnify and hold harmless the County, and its successors or assigns, from and against all claims, liabilities, damages and expenses (including reasonable attorneys' fees) relating to or arising out of any Environmental Condition at or relating to the Premises to the extent such Environmental Condition arises during the Lease Term but only to the extent such Environmental Condition was caused by the act or omission of the City, its contractors or agents subsequent to the date hereof.

For the purposes of this Lease:

"Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authorities regulating or imposing standards of liability or standards of conduct (including common laws) concerning air, water, solid waste, Hazardous Materials (as hereinafter defined), worker and community right-to-know, hazard communication, noise, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental, health, safety, building, and land use concerns as may now or at any time hereafter be in effect.

"Environmental Condition" means a condition of the soil, surface waters, groundwaters, stream sediments, air and similar environmental media both on and off the Premises resulting from any activity, inactivity or operations occurring on the Premises, that, by virtue of Environmental Laws, (i) requires investigatory, corrective or remedial measures and (ii) comprises a basis for claims against, demands on or liabilities of the County or the City. Environmental Conditions shall include those conditions identified or discovered before or after the expiration or earlier termination

of this Lease, resulting from any activity, inactivity or operations whatsoever after the commencement but before the expiration or earlier termination of this Lease. Notwithstanding any of the foregoing terms to the contrary, "background levels" as hereinafter defined, shall not be deemed to be Environmental Conditions. As used herein, "background levels" shall mean concentrations of regulated substances in the ambient air, soil or water in the vicinity of the Premises, introduced by natural phenomena or historic uses in the area and not materially changed, either in kind or concentration, by the City's use of the Premises during the Lease Term, provided that the governmental agencies having authority to regulate such conditions have not elected to require remediation of same as of the termination of this Lease.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, derivatives of petroleum products or fuel oil, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, medical waste, biomedical waste, infectious materials, any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or safety or to the environment and any substance defined by a local, state or federal agency to be a hazardous substance.

It is understood and agreed that the intent of this Section is not to expand the limitations on use of the Premises set forth in Section 2 of this Lease. This indemnification shall survive the expiration or termination of this Lease for a period of three (3) months from such expiration or termination.

21. SIGNAGE; SATELLITE DISH AND COMMUNICATION ANTENNAS. The City shall have the right to place one or more signs upon the Premises, which shall be of materials and design selected by the City in its sole discretion. All signage installed by the City shall comply with all applicable governmental requirements. The City shall have the right to install a satellite dish and communication antennas upon the Premises, provided such satellite dish or antennas shall comply with all applicable governmental requirements.

22. SUBORDINATION; ATTORNMEN. This Lease shall be subject and subordinate to all mortgages which presently affect the Premises and each and every of the advances which may hereafter be made thereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that such subordination is expressly contingent on the delivery by the County of a non-disturbance agreement from any mortgagee to whose interest this Lease is subordinate, which shall provide that the rights of the City hereunder shall not be disturbed so long as the City is not in material default hereunder. In confirmation of such subordination, the City shall execute promptly, without cost or charge, any instruments or certificates that the County may reasonably request confirming such subordination.

This Lease shall not terminate or be terminable by the City by reason of foreclosure of any mortgage or sale in lieu thereof which may now or hereafter affect the Premises. The City agrees to attorn to any mortgagee or purchaser at a sale in lieu of foreclosure, as the case may be; provided, however, that the City shall have no obligation to pay any sum due hereunder to such mortgagee or purchaser, until given notice of the transfer and acceptable proof thereof.

23. NOTICE OF LEASE. The County and the City agree that this Lease shall not be recorded. At the option of either party, the County and the City shall execute a short form of notice of lease for recording purposes, which shall be subject to approval of respective counsel for the County and the City.

24. NOTICE. Any notice under this Lease must be in writing and must be sent by overnight express or by registered or certified mail to the last address of the party to whom the notice is to be given as designated by such party from time to time in writing. the County and the City hereby designate the following as their respective addresses:

If to the County: Monroe County Airport Business Manager
Key West International Airport
3491 S. Roosevelt Boulevard
Key West, FL 33040

Attn: Bevette Moore

With a copy to: John R. Collins, Esq.
Monroe County Attorney
1100 Simonton St.
Room 2-205
Key West, FL 33040

If to the City: City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

With a Copy To: John R. Herin, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Museum Tower
Suite 2200
150 West Flagler Street
Miami, Florida 33130

Notice shall be deemed given and received on the date of delivery to the addressee, whether or not accepted.

25. CITY'S REPRESENTATIONS AND WARRANTIES.

(a) Assurance Against Discrimination. County and City agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order.

County and City agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

(b) That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed including exercise or expiration of appeal rights.

(c) It shall be a condition of this lease that the County reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now know or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

(d) That the City expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Land to such a height so as to comply with Federal Aviation Regulations, Part 77.

(e) That the Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which should interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

26. COUNTY'S REPRESENTATIONS AND WARRANTIES.

(a) County's Authority. The County has full power and authority to own and lease the Premises and to comply with the terms of this Lease and there is no ground lease on the Land.

(b) Title. The County is the owner of marketable title to the Premises, free and clear of all liens, encumbrances and restrictions of any kind, except as disclosed in writing to the City.

(c) Litigation. There are no actions, suits, proceedings or investigations (including condemnation proceedings) pending or, to the knowledge of the County, threatened against the County or the Premises and the County is not aware of any facts which might result in any such action, suit or proceeding. If the County is served with process or receives notice that litigation may be commenced against it, the County shall promptly notify the City.

(d) Ingress/Egress: The City, its agents, employees, invitees, residents and suppliers shall have the Right of ingress and egress to and from the Premises, which right of ingress and egress shall not be unreasonably restricted by the County.

(e) Hazardous Materials. (a) The County has conducted no activity on the Premises involving the generation, treatment, storage or disposal of Hazardous Materials; (b) No portion of the Premises is now being used or to the best of the County's knowledge has ever been used to treat, store, generate or dispose of Hazardous Materials; (c) the County has received no written notice that any previous owner or the City conducted any such activity; (d) the County has received no written notice of any discharge, spill, or disposal of any Hazardous Material on or under the Premises; (e) the County has received no written notice from any governmental authority or any other party of any Hazardous Materials violations concerning the Premises or any portion thereof, nor is the County aware of any such violation; (f) the County has received no written notice as to any locations off the Premises where Hazardous Materials generated by or on the Premises have been treated, stored, deposited or disposed of; and (g) the County has no knowledge of the presence of any Hazardous Materials upon the Premises.

(f) Accuracy of Statements. No representation or warranty made by the County in this Lease, in any Schedule attached hereto or in any letter or certificate furnished to the City pursuant to the terms hereof, each of which is incorporated herein by reference and made a part hereof, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

(g) Survival of Representations. All of the representations and warranties of the County set forth in this Lease shall expressly survive the expiration or earlier termination of this Lease.

27. MISCELLANEOUS

(a) Rights Cumulative. All rights and remedies of the County and the City under this Lease shall be cumulative and none shall exclude any other rights and remedies allowed by law.

(b) Terms. The necessary grammatical changes required to make the provisions hereof apply either to corporations, trusts, partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed.

(c) Binding Effect. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of the County and of the City, but also of their respective successors or assigns, provided this clause shall not permit any assignment by the City contrary to the provisions of Section 17 above.

(d) Lease Contains All Terms. All of the representations and obligations of the parties hereto are contained herein and in any Schedules attached hereto, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon the County or the City unless in writing signed by the County and the City or their duly authorized agent empowered by written authority.

(e) County's Title. The County's title is and always shall be paramount to the title of the City. Nothing herein contained shall empower the City to commit or engage in any act which can, shall or may encumber the title of the County.

(f) Captions. The captions of sections and subsections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such sections or subsections.

(g) Covenants and Conditions. All of the covenants of the City hereunder shall be deemed and construed to be "conditions", if the County so elects, as well as "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate instance.

(h) Only County/City Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between the County and the City.

(i) Governing Law. This Lease shall be governed by and construed in accordance with the internal laws of the State of Florida.

(j) Partial Invalidity. If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each and every other term, provision

and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

(k) Construction of Contract. The County and the City have both participated in the negotiation and drafting of this Lease. Accordingly, this Lease shall not be more strictly construed against any one of the parties hereto.

(l) Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

(m) Attorneys' Fees. In the event of any litigation arbitration or other proceedings to enforce the terms of this Lease, the party not prevailing in such dispute shall pay any and all reasonable attorneys' fees and costs, including paralegals' fees incurred by the other party in enforcing or establishing its rights hereunder.

(n) Right of Estoppel Certificates. Each party, within ten (10) business days after notice from the other party, shall execute and deliver to the other party, in reasonable form if necessary, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications and such additional facts within the requested party's knowledge as may be reasonably required by the requesting party. Failure of either party to properly execute and deliver such certificate within ten (10) business days after request therefore shall be conclusive upon the non-responsive party as to the truth of all such statements contained therein and may be relied on by any person holding or proposing to acquire an interest in the Premises.

(o) WAIVER OF JURY TRIAL; JURISDICTION. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON, ARISING OUT OF OR RELATING TO THIS LEASE. EACH OF THE PARTIES HERETO IRREVOCABLY AGREES TO SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF FLORIDA FOR THE PURPOSE OF RESOLVING ANY DISPUTES ARISING UNDER OR RELATING TO THIS LEASE.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the County and the City hereunder have hereunto set their names and seals the day and year first above written.

COUNTY:

Signed, Sealed and Delivered
in the presence of:

MONROE COUNTY BOARD OF COUNTY
COMMISSIONERS

By: _____
Name: _____
Title: _____

CITY:
THE CITY OF MARATHON

By: MICHAEL H. PUTO
Name: Michael H. Puto
Title: CITY MANAGER

G:\W-MCA\37388 - Marathon\020\Airport Lease v5.doc

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY: [Signature]
ATTORNEY'S OFFICE
DATE: 11/3/09

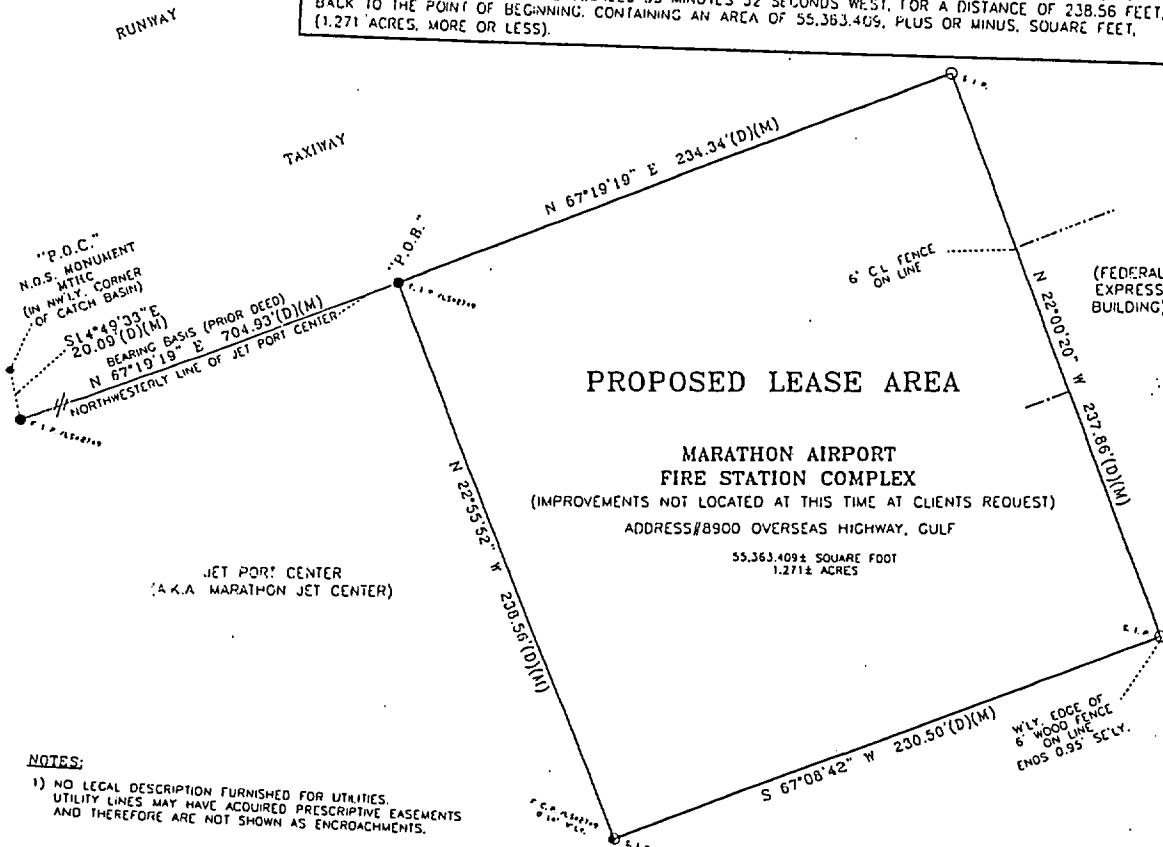
SKETCH OF BOUNDARY SURVEY

CITY OF MARATHON

LEGAL DESCRIPTION AS PREPARED AT CLIENTS REQUEST:

MARATHON AIRPORT FIRE STATION COMPLEX:
A PARCEL OF LAND LOCATED AT MARATHON AIRPORT, BEING A PART OF SECTION 1, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACA, MONROE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
COMMENCING AT A NATIONAL OCEAN SURVEY HORIZONTAL CONTROL MONUMENT STAMPED "MTHC 1989", AND STATE PLANE COORDINATES ARE NORTHING 142029.09 AND EASTING 638059.76 (1983/80), AS SHOWN ON SURVEY OF JET PORT CENTER, DATED JANUARY 28, 1998, BY FREDERICK H. HILDEBRANDT, PROFESSIONAL LAND SURVEYOR NUMBER 2749; BEAR SOUTH 14 DEGREES 49 MINUTES 33 SECONDS EAST, FOR A DISTANCE OF 20.09 FEET, TO A POINT, AT THE NORTHWESTERLY CORNER OF SAID JET PORT CENTER; THENCE BEAR NORTH 67 DEGREES 19 MINUTES 19 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID JET CENTER, SAID POINT TO BE KNOWN AS THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREINAFTER INTENDED TO BE DESCRIBED; THENCE CONTINUE BEARING NORTH 67 DEGREES 19 MINUTES 19 SECONDS EAST, FOR A DISTANCE OF 234.34 FEET, TO A POINT; THENCE BEAR SOUTH 22 DEGREES 00 MINUTES 20 SECONDS EAST, TO AND ALONG AN EXISTING CHAIN LINK AND WOOD FENCE, FOR A DISTANCE OF 237.86 FEET, TO A POINT; THENCE BEAR SOUTH 67 DEGREES 08 MINUTES 42 SECONDS WEST, FOR A DISTANCE OF 230.50 FEET, TO A POINT; THENCE BEAR NORTH 22 DEGREES 55 MINUTES 52 SECONDS WEST, FOR A DISTANCE OF 238.56 FEET, BACK TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 55,363.409, PLUS OR MINUS, SQUARE FEET, (1.271 ACRES, MORE OR LESS).

EXHIBIT A-1



NOTES:

- 1) NO LEGAL DESCRIPTION FURNISHED FOR UTILITIES. UTILITY LINES MAY HAVE ACQUIRED PRESCRIPTIVE EASEMENTS AND THEREFORE ARE NOT SHOWN AS ENCROACHMENTS.

N.O.S. = NATIONAL OCEAN SURVEY

U.S. HIGHWAY NO. 1

LEGEND

- F.C.P. = FOUND CONTROL POINT
- O.C.P. = 40d NAIL/PK/NUT
- S.C.P. = SET CONTROL POINT
- S.S. = SS SCREW/DISC#4906
- 3/4" = FOUND 3/4" PIPE
- /SIZE/CAP TYPE = /SIZE/CAP TYPE
- SET 3/4" PIPE = SET 3/4" PIPE
- /LS#4906 = /LS#4906
- FOUND 5/8" REBAR = FOUND 5/8" REBAR
- /SIZE/CAP TYPE = /SIZE/CAP TYPE
- PERMANENT REFERENCE MONUMENT = PERMANENT REFERENCE MONUMENT
- POWER POLE/BENCH MARK = POWER POLE/BENCH MARK
- TEST HOLE = TEST HOLE
- PERCOLATION TEST HOLE = PERCOLATION TEST HOLE
- INDICATES CONCRETE = INDICATES CONCRETE
- A.K.A. = ALSO KNOWN AS
- C.M.U.S. = CONCRETE MASONRY UNIT STRUCTURE
- -P-T-C- = AERIAL POWER, TELEPHONE, AND/OR CABLE LINES
- A.M.H.W.L. = APPROXIMATE MEAN HIGH WATER LINE ACCORDING TO ARMY CORP OF ENGINEERS ESTIMATE
- EL. = ELEVATIONS (SHOWN THUS X 5.00') ARE RELATIVE TO 1929 NATIONAL GEODETIC VERTICAL DATUM.
- MONUMENT # 30-A-1 ELEVATION 6.20
- 100 Year Coastal Flood Zone AF Base Flood Elevation 6.00'
- FIRM NO.120681 PANEL NO. 12811 REV. 02/15/02

ABBREVIATIONS

- ENC. = ENCROACHMENT
- C.L.F. = CHAIN LINK FENCE
- CONC. = CONCRETE
- R/W = RIGHT-OF-WAY
- (P) = PLAT
- (M) = MEASURED
- (C) = CALCULATED
- (D) = DEED/DESCRIPTION
- P.O.C. = POINT OF COMMENCEMENT
- P.O.B. = POINT OF BEGINNING
- P.C. = POINT OF CURVE
- P.I. = POINT OF INTERSECTION
- P.T. = POINT OF TANGENT
- C. = CENTERLINE
- A/C = AIR CONDITIONER
- BALC. = BALCONY
- CANT. = CANTILEVER
- TYP. = TYPICAL
- LY. = ERLY

This certifies that a survey of the above furnished description was made under my supervision and the survey meets the "Minimum Technical Standards" set forth by the Florida Board of Professional Land Surveyors in Chapter 61C17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.
Date Survey completed: 05/18/04
BOUNDARY SURVEY FOR LEGAL DESCRIPTION
CERTIFIED TO:
MONROE COUNTY
FLORIDA KEYS MARATHON AIRPORT
c/o JAMES R. PAROS,
PUBLIC SAFETY DIRECTOR,
MARATHON AIRPORT MANAGER

John Paul Grimes III
JOHN PAUL GRIMES III, S. & M., NO. 4906
NOT VALID WITHOUT SIGNATURE & ORIGINAL RAISED SEAL
THIS SURVEY IS NOT ASSIGNED.
THIS SURVEY SUBJECT TO A TITLE SEARCH.

J.P. GRIMES, REGISTERED FLORIDA SURVEYOR AND MAPPER
P.O. BOX 510403 #14 6th STREET
KEY COLONY BEACH, FL. 33051-0403
PH. (305) 743-4510
FAX (305) 743-3277

P.N. 040340 JJO

NOTE: UNDERGROUND ENCROACHMENTS IF ANY ARE NOT LOCATED.
ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.

DESCRIPTION AS PREPARED AT REQUEST OF CLIENT:

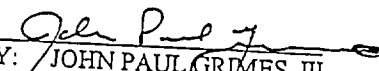
MARATHON AIRPORT FIRE STATION COMPLEX:
A PARCEL OF LAND LOCATED AT MARATON AIRPORT, BEING A PART OF SECTION 1, TOWNSHIP 66 SOUTH, RANGE 32 EAST, KEY VACA, MONROE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:
COMMENCING AT A NATIONAL OCEAN SURVEY HORIZONTAL CONTROL MONUMENT STAMPED "MTHC 1989", AND STATE PLANE COORDINATES ARE NORTHING 142029.09 AND EASTING 638059.76 (1983/90), AS SHOWN ON SURVEY, OF JET PORT CENTER, DATED JANUARY 28, 1998, BY FREDERICK H. HILDEBRANDT, PROFESSIONAL LAND SURVEYOR NUMBER 2749; BEAR SOUTH 14 DEGREES 49 MINUTES 33 SECONDS EAST, FOR A DISTANCE OF 20.09 FEET, TO A POINT, AT THE NORTHWESTERLY CORNER OF SAID JET PORT CENTER; THENCE BEAR NORTH 67 DEGREES 19 MINUTES 19 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID JET CENTER, FOR A DISTANCE OF 704.93 FEET, TO A POINT, AT THE NORTHEASTERLY CORNER OF SAID JET PORT CENTER, SAID POINT TO BE KNOWN AS THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREINAFTER INTENDED TO BE DESCRIBED; THENCE CONTINUE BEARING NORTH 67 DEGREES 19 MINUTES 19 SECONDS EAST, FOR A DISTANCE OF 234.34 FEET, TO A POINT; THENCE BEAR SOUTH 22 DEGREES 00 MINUTES 20 SECONDS EAST, TO AND ALONG AN EXISTING CHAIN LINK AND WOOD FENCE, FOR A DISTANCE OF 237.86 FEET, TO A POINT; THENCE BEAR SOUTH 67 DEGREES 08 MINUTES 42 SECONDS WEST, FOR A DISTANCE OF 230.50 FEET, TO A POINT; THENCE BEAR NORTH 22 DEGREES 55 MINUTES 52 SECONDS WEST, FOR A DISTANCE OF 238.56 FEET, BACK TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 55,363.409, PLUS OR MINUS, SQUARE FEET, (1.271 ACRES, MORE OR LESS).

ACCORDING TO THE ATTACHED SKETCH OF SURVEY BY JOHN PAUL GRIMES, III, REGISTERED FLORIDA SURVEYOR AND MAPPER NUMBER 4906, DATED 05/18/04 AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED 05/18/04

PREPARED FOR:
MONROE COUNTY
FLORIDA KEYS MARATHON AIRPORT
c/o JAMES R. PAROS, MANAGER

P.N. 040340WL.DOC

BY: 
JOHN PAUL GRIMES, III
REGISTERED FLORIDA
SURVEYOR AND MAPPER NO. 4906
14 6th STREET, P.O. BOX 510403
KEY COLONY BEACH, FLORIDA,
33051-0403
PH. (305) 743-4510 FAX (305) 743-3277